Western Paper Products, Inc. d/b/a Specialty Envelope Company, Samuel L. Peters, Receiver, and its successor, Specialty Envelope, Inc. *and* United Paper Workers International Union, AFL–CIO and its Local 459. Cases 9–CA–29283, 9–CA–29552, 9–CA–29703, 9–CA–29829, and 9–CA–30136

July 26, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On June 22, 1993, Administrative Law Judge Peter E. Donnelly issued the attached decision in this proceeding. The General Counsel filed exceptions and a supporting brief, and the Charging Party filed cross-exceptions and a supporting brief. Respondent Samuel L. Peters, Receiver (Peters or the Receiver) and Respondent Specialty Envelope, Inc. (Specialty), collectively referred to as the Respondents, filed exceptions and a supporting brief.[1] The General Counsel and the Respondents filed answering briefs, and the Respondents filed a reply brief.

On November 23, 1993, the Board issued an order reversing the judge and granting the General Counsel's motion to amend the complaint to allege that Peters, in his capacity as Receiver, was an employer within the meaning of the Act. 313 NLRB 94 (1993). The Board remanded the case to Judge Donnelly ''to adduce further evidence on the Receiver's alleged status as a statutory employer and its alleged liability for actions taken during the receivership.'' 313 NLRB at 94–95. The Board did not pass on any other issues raised by the parties' exceptions. 313 NLRB at 94 fn. 1.

On July 29, 1994, Judge Donnelly issued the attached supplemental decision in this proceeding. The Respondents filed exceptions and a supporting brief, and the Charging Party filed cross-exceptions and a supporting brief. The General Counsel filed an answering brief, and the Respondents filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision, the supplemental decision, and the record in light of the exceptions and briefs[2] and has decided to affirm the judge's rulings, findings, and conclusions as modified and explained below, and to adopt the recommended Order as modified[3] and set forth in full below.

In his decisions, the judge found that the three Respondents committed numerous violations of Section 8(a)(5) of the Act, and that two of the Respondents were successors liable for remedying the unfair labor practices committed by their predecessors. For the reasons set forth below, we affirm the judge's decisions in part and reverse in part.

I. OVERVIEW

Respondent Western and the Union were parties to a collective-bargaining agreement effective from December 10, 1990, to November 20, 1993. In November 1991, without notice to the Union, Western ceased making contractually required payments for health insurance, sickness and accident disability insurance, and life insurance, and ceased making contractually required pension fund payments.

On January 13, 1992, pursuant to a private agreement between Western and Central Trust Company (one of Western's creditors), a state court judge appointed Respondent Peters to be the Receiver for Western and in control of day-to-day operation of the business. All of Western's employees remained. When Peters became the Receiver, he did not honor the contract and did not recognize or bargain with the Union. For example, he suspended birthday holidays and paid breaks, changed vacation benefits, ceased following the grievance procedure, denied the Union access to the facility, and abandoned the recall procedure. Peters assumed the responsibility of Receiver with the intention of purchasing Western's assets.

Early in 1992 Peters incorporated Respondent Specialty and is its sole owner. On June 19, 1992, Specialty purchased Western's assets. Specialty hired all of the predecessor employees. Specialty did not honor the contract and did not recognize or bargain with the Union.

II. WESTERN VIOLATED SECTION 8(a)(5)

The judge correctly found that Western violated Section 8(a)(5) by failing to make contractually required payments for health insurance, sickness and accident disability insurance, and life insurance, and by failing to make contractually required pension fund payments.[4] Nevertheless, the judge recommended no remedy for these violations because Western has

[1] No exceptions were filed by Respondent Western Paper Products, Inc. d/b/a Specialty Envelope Company (Western).

[2] The Respondents' request for oral argument is denied, as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[3] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[4] In Conclusion of Law 7 of his supplemental decision, the judge found that Western violated Sec. 8(a)(5) by failing to make monthly payroll deductions of union dues and to remit them to the Union. There is no record evidence to support the judge's finding that Western failed to deduct and remit dues, and therefore we do not adopt it.

ceased to exist. It is well established, however, that ''mere discontinuance in business does not render moot issues of unfair labor practices alleged against a respondent.'' *East Dayton Tool & Die Co*., 239 NLRB 141 fn. 1 (1978). Even if Western is unable to fulfill its remedial responsibilities, ''it is still possible that the Board's order may yet be the basis—and the indispensable basis—of liability on the part of [respondent's officers, agents, successors, and assigns] . . . .'' *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 107 (1942). Accordingly, we shall issue an appropriate remedial order.

III. PETERS, AS THE RECEIVER, IS A 2(2) EMPLOYER

The judge found that Peters, in his capacity as the Receiver, is an employer under the Act. The Respondents have excepted, contending that the Receiver is exempt from the Act's jurisdiction as a political subdivision of the State of Ohio. We agree with the judge.

An entity is an exempt political subdivision if it (1) was created directly by the State, so as to constitute a department or administrative arm of the Government or (2) is administered by individuals responsible to public officials or the general electorate. *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971). Contrary to the Respondents, we agree with the judge that, under our holding in *Holiday Inn Coliseum*, 300 NLRB 631 (1990), a receiver, such as Peters, is not administered by individuals responsible to public officials or the general electorate and thus does not meet the second prong of the *Hawkins County* test.

The Respondents also argue that Peters, as the Receiver, meets the first prong of the *Hawkins County* test as having been ''created directly by the state'' because he is an officer of the state court that appointed him. The Respondents rely, inter alia, on *Greenblatt v. Ottley*, 430 N.Y.S.2d 958 (1980). We find that case to be distinguishable.

Under the first prong of *Hawkins County* an entity is a political subdivision only if it was created *so as to constitute a department or administrative arm of the Government*. In the case on which the Respondents rely, the New York Supreme Court, pursuant to the State's petition, had appointed the commissioner of the state department of health as the receiver for a publicly licensed health care facility. In finding that the receiver was a political subdivision, the court emphasized that the commissioner was a public official and that the state department of health was itself a political subdivision of the State of New York. Peters, as a private businessman, is not comparable to a public official in charge of a political subdivision of a State.

Further, Peters was appointed by a court at a creditor's request in order to preserve the value of the business in receivership. We do not believe that the Receiver, having been appointed at a private party's request to preserve Western's business, can reasonably be considered a department or administrative arm of the Government.

In sum, there is a no evidence that the receivership was intended to be a department or administrative arm of the state government. Accordingly, we find that the Receiver is not exempt from Board jurisdiction.

IV. THE RECEIVER VIOLATED SECTION 8(a)(5)

A. The judge found that Peters, as the Receiver, was a successor employer to Western under *NLRB v. Burns Security Services*, 406 U.S. 272 (1972). We agree.[5] The record shows that Peters continued Western's business operations with the same employee work force doing the same jobs under the same working conditions. Thus, we find that the General Counsel established a ''substantial continuity'' between Western and Peters. *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 43 (1987).

The Respondents argue that Peters, as the Receiver, cannot be obligated to bargain with the Union as a successor to Western because the Union never made a bargaining demand on the Receiver. We disagree with the Respondents' claim that the Union made no bargaining demand.

The record establishes that the Union repeatedly sought to represent the Receiver's unit employees as their exclusive bargaining representative. The Receiver was well aware of the Union's efforts because it rebuffed each of them.

For example, in a letter dated January 15, 1992, the Union protested Peters' unilateral reduction of employee benefits. In addition, the letter requested that Peters furnish the Union with information concerning the purchase arrangements for Western, including information regarding the receivership.[6] Finally, the letter ''request[ed] a meeting with you . . . at the earliest possible date.''

Additionally, in a letter to Peters dated February 5, 1992, the Union stated that it ''is very interested in having a meeting to insure that the current Labor Agreement Provisions which you have allegedly taken away are re-established as soon as possible.''

Further, in a letter to Peters dated March 3, 1992, the Union requested health insurance information.

Under Board law, a ''valid request to bargain need not be made in any particular form, or in haec verba

[5] In its cross-exceptions, the Charging Party contends that the judge erred in failing to consider whether Peters was the alter ego of Western. We agree with the judge, however, that the General Counsel's complaint contained no such allegation, and the matter was not litigated. Accordingly, we do not pass on the issue the Charging Party raises.

[6] In Conclusion of Law 10 of his supplemental decision, the judge mistakenly found that the Union requested information from Western. The record does not support this finding, and we do not adopt it.

. . . .'' *Yolo Transport*, 286 NLRB 1087 fn. 1 (1987). The Board has also found that a request for information is tantamount to a request for bargaining. E.g., *Grand Islander Health Care Center*, 256 NLRB 1255, 1256 (1981); *Nappe-Babcock Co.*, 245 NLRB 20, 21 fn. 4 (1979). Under all the circumstances, we find here that the Union's communications with the Receiver ''reasonably informed the [Receiver] . . . that the Union sought to represent the [Receiver's] employees.'' *Hydrolines, Inc.*, 305 NLRB 416, 420 (1991). Accordingly, we adopt the judge's findings that Peters, as the Receiver, violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the Union, and by refusing to furnish the Union the relevant and necessary information it requested in its letters dated January 15 and March 3, 1992.

B. The judge further found that the Receiver was required to bargain with the Union before making changes in employees' existing terms of employment. The Respondents have excepted, claiming that the Receiver was entitled to set new terms of employment because it announced them before any bargaining obligation arose. We find no merit in this contention.

Western continued to operate until January 9, 1992, when, without the funds to guarantee wages, it sent employees home to await further developments. The first day of the receivership was January 13, 1992. On that same day, the employees were notified that they should return to work. The Receiver required no employment applications for continued employment and gave them no information about any proposed changes in terms and conditions of employment before permitting them to return.

On his first day of operations, but not before the employees were invited to return to the plant, Peters held meetings with first- and second-shift employees. At the outset of each meeting Peters told the employees that they would be paid for work they performed for Western and that they would keep their jobs.

At the first-shift meeting, Peters also told employees that the only thing he was guaranteeing them was a job. In addition, Peters told employees that holidays would remain essentially the same, but that all employees would accrue 3 weeks' vacation regardless of the duration of their employment, which was a change from the predecessor's vacation policy. At the second-shift meeting, Peters stated that the union contract was null and void during the receivership, and that he bought the Company but not the contract. We think these notices of changed terms and conditions of employment came too late, because they were given after it was clear that Peters intended to retain the employees.

In *Burns*, supra at 294–295, the Court stated as follows:

> Although a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor, there will be instances in which it is perfectly clear that the new employer plans to retain all of the employees in the unit and in which it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms. In other situations, however, it may not be clear until the successor employer has hired his full complement of employees that he has a duty to bargain with a union, since it will not be evident until then that the bargaining representative represents a majority of the employees in the unit . . . .

In *Spruce Up Corp.*, 209 NLRB 194, 195 (1974), the Board interpreted the ''perfectly clear'' exception as follows:

> We believe the caveat in *Burns* . . . should be restricted to circumstances in which the new employer has either actively or, by tacit inference, misled employees into believing they would all be retained without change in their wages, hours, or conditions of employment, or at least to circumstances where the new employer . . . has failed to clearly announce its intent to establish a new set of conditions prior to inviting former employees to accept employment.

See generally *Canteen Co.*, 317 NLRB 1052 (1995).

Applying these principles to the facts of this case, we agree with the judge that the Receiver was obligated to consult with the Union before changing the terms of employment that prevailed under the predecessor. As set forth above, after being sent home by Western on January 9, the employees returned to work on January 13, the first day the Receiver assumed control of operations as a successor to Western, without being required to complete employment applications or otherwise ask to be employed by the Receiver. Under these circumstances, and viewing the situation from the employees' perspective, see *Fall River*, supra at 43, we find that it was perfectly clear on January 13 when the employees returned to work that the Receiver intended to employ them. Prior to that time, however, the Receiver had not informed the employees that their terms and conditions of employment had changed. We therefore conclude that the Receiver has failed to show that it clearly announced an intent to change those terms and conditions before it was perfectly clear that the Receiver intended to employ all of the predecessor employees. Accordingly, under the rationale of *Spruce Up*, supra, we conclude that the Receiver was obligated to bargain with the Union before making any

changes in existing terms[7] and that it violated Section 8(a)(5) by failing to do so.[8]

C. As a defense, the Receiver argues that it had no duty to bargain with the Union because it had a good-faith doubt of the Union's majority status based on a decertification petition signed by a majority of employees. We find no merit in this contention.

The petition was not circulated until February 1992, after the Receiver was operating the business and had committed serious unfair labor practices by making numerous unilateral changes and refusing to recognize and bargain with the Union. It is well established that when ''an employer, prior to the signing of a petition, engages in conduct designed to undermine employee support for, or cause their disaffection with, the union, the petition is tainted and the employer will be precluded from relying on it as a basis for questioning the union's majority status and withdrawing recognition from that labor organization.'' *Powell Electrical Mfg. Co.*, 287 NLRB 969–970 (1987), enfd. in pertinent part 906 F.2d 1007 (5th Cir. 1990). Applying this test, we find that the Receiver's violations of its duty to recognize and bargain with the Union were exactly the types of unfair labor practices that would undermine employee support for the Union. Indeed, the Supreme Court has long recognized that ''the unlawful refusal of an employer to bargain collectively with its employees' chosen representatives disrupts the employees' morale, deters their organizational activities, and discourages their membership in unions.'' *Franks Bros. Co. v. NLRB*, 321 U.S. 702, 704 (1944). Accordingly, we find that the Receiver is precluded from relying on the decertification petition to assert a good-faith doubt of the Union's majority status, because the petition was tainted by the Receiver's unlawful conduct.[9] See *NLRB v. Williams Enterprises*, 50 F.3d 1280 (4th Cir. 1995).

V. THE EXTENT OF THE RECEIVER'S LIABILITY

A. The judge found that under *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973), the receiver was jointly and severally liable for remedying the unfair labor practices Western committed. The Respondents have excepted. We find merit in the exception.

The complaint did not allege that the Receiver was a *Golden State* successor to Western, and the General Counsel during the hearing disavowed any such theory. We therefore do not adopt the judge's finding and shall modify the recommended Order and notice accordingly.

B. The judge found that the receivership terminated on June 19, 1992, when Specialty purchased the assets of Western. The record shows, however, that the receivership did not terminate until September 8, 1992, when the asset purchase was closed pursuant to court order. Thus, the Receiver's liability for the unfair labor practices it committed continues until September 8, 1992.

VI. SPECIALTY IS A ***Burns*** SUCCESSOR BUT NOT A ''PERFECTLY CLEAR'' SUCCESSOR

A. The judge found that, under *BURNS* and *Fall River*, Specialty is a successor employer obligated to bargain with the Union. We agree. The record clearly shows that Specialty retained all of the predecessor employees and operated the business in basically unchanged form. Thus, we find that the General Counsel

[7] Chairman Gould agrees that the Receiver violated Sec. 8(a)(5) and (1) of the Act by unilaterally setting initial terms and conditions of employment without bargaining with the Union, and that this violation is warranted under the standard set forth in *Spruce Up*. However, as the Chairman stated in his concurring opinion in *Canteen Co.*, supra at 1054–1055, it is his judgment that the *Spruce Up* standard represents an unduly restrictive reading of the Supreme Court's definition of circumstances in which a successor employer must bargain about initial terms and conditions of employment. Under the analysis set forth in his *Canteen* concurrence, the Chairman, in reaching the conclusion that the Receiver was a ''perfectly clear'' successor because it intended to employ all of the predecessor's work force, relies solely on the fact that the Receiver invited all of the prior employer's employees to return to work and finds it irrelevant that the Receiver did not announce any new terms of employment until after the employees were notified to return to the plant.

Member Cohen does not agree that the Receiver was obligated to bargain about its initial terms and conditions of employment. In his view, the Receiver did not waive its *Burns* right to set those terms and conditions of employment. On the first day of operations, the Receiver told the employees that they would keep their jobs. There was no prior promise to this effect. Assuming arguendo that this was an unconditional offer to hire the predecessor employees, it is clear that the Receiver simultaneously told them that their conditions would be different. In these circumstances, and consistent with his view set forth in *Canteen Co.*, supra at 1058–1059, Member Cohen would find that Peters was free to set these initial terms and conditions.

[8] In Conclusion of Law 7 of his supplemental decision, the judge found that Peters violated Sec. 8(a)(5) by failing to make monthly payroll deductions of union dues and to remit them to the Union. The relevant complaint paragraph alleges, inter alia, that Peters is obligated to deduct and remit dues ''as provided for in the contract'' between the Union and Western. Under *Burns*, however, the Receiver was not bound by the Union's collective-bargaining agreement with Western. 406 U.S. at 291. Its obligation as a ''perfectly clear'' successor was limited to complying with the terms and conditions of employment prescribed by that contract. It is well established, however, that an employer's obligation to abide by a dues-checkoff provision is solely a creature of the contract between the employer and the union, and thus does not survive the contract's expiration. See *Bethlehem Steel Co.*, 136 NLRB 1500 (1962), enfd. in relevant part 320 F.2d 615 (3d Cir. 1963), cert. denied 375 U.S. 984 (1964). Accordingly, the Receiver was not required to abide by the dues-checkoff provisions of its predecessor's contract, and thus we do not adopt this unfair labor practice finding of the judge.

[9] Although Member Cohen does not find a violation with respect to the Receiver's setting of initial terms, he agrees that the Receiver violated the Act by refusing to recognize and bargain with the Union. He further believes that this violation tainted the decertification petition.

established a ''substantial continuity'' between the Receiver and Specialty. *Fall River*, supra, 482 U.S. at 43.

We also agree with the judge that in letters dated June 23 and July 1, 1992, the Union specifically requested that Specialty ''meet for purposes of bargaining over the terms and conditions of employment for employees of Specialty Envelope, Inc.'' Accordingly, we adopt the judge's finding that Specialty unlawfully refused to bargain with the Union in violation of Section 8(a)(5).[10]

B. The judge further found that, under the ''perfectly clear'' exception to *Burns*, Specialty was obligated to bargain with the Union before making changes in employees' existing terms of employment. We find merit in the Respondents' exception to this finding.

In June 1992 Peters informed employees that the court had approved Specialty's purchase of the business the Receiver was operating. Peters invited the employees to apply for employment with Specialty. On June 25, 1992, those who wished to apply received an employment application packet. In addition to an application form, which the applicants completed, the packet contained a page listing new terms of employment. Specialty did not inform the applicants that they were hired, or otherwise demonstrate that it intended to hire them, until after the employees had an opportunity to review the application forms.

In *Spruce Up*, the respondent distributed letters to the predecessor's employees inviting them to apply for employment. In the letter the respondent described the rates of commission it intended to pay, which were different from the predecessor's rates. Here, before extending job offers to its predecessor's employees, Specialty distributed application packets in which it announced what terms of employment would be in effect, thereby informing applicants that if they applied and were accepted for employment, there would be different terms. Thus, as in *Spruce Up*, Specialty stated from the outset that it would be hiring the predecessor's employees only pursuant to new terms and conditions of employment. Accordingly, Specialty was not a ''perfectly clear'' successor that was obligated to consult with the Union before setting initial terms of employment.[11] See also *Banknote Corp. of America*, 315 NLRB 1041, 1043 (1994).

Our conclusion that Specialty was entitled to set its own initial terms requires reversal of all but one of the judge's findings of unlawful unilateral changes. The one exception concerns the disciplinary policy with respect to the attendance of unit employees that Specialty issued on July 21, 1992, approximately a month after it commenced operations. Because this new policy was announced after Specialty's duty to bargain had taken effect, we adopt the judge's finding that Specialty's unilateral change violated Section 8(a)(5) of the Act.

VII. SPECIALTY'S LIABILITY

The judge found that, under *Golden State*, Specialty was jointly and severally liable for remedying the unfair labor practices Western and the Receiver committed. The Respondents have excepted. We find no merit to the exceptions. The record supports the judge's finding, which we adopt, that when Specialty acquired the business the Receiver was operating, Specialty was fully aware of the unfair labor practices Western and the Receiver had committed.

AMENDED CONCLUSIONS OF LAW

In light of our findings above, we amend the Conclusions of Law section in the judge's supplemental decision as follows:

1. Respondents Western Paper Products, Inc. d/b/a Specialty Envelope Company, Samuel L. Peters, Receiver, and Specialty Envelope, Inc. are each an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Peters, as Receiver for Western, is a *Burns* successor to Western, and Respondent Specialty is a *Burns* successor to the Receiver. In addition, Respondent Specialty is *Golden State* successor to the Receiver and Western.

3. United Paper Workers International Union, AFL–CIO and its Local 459 are each a labor organization within the meaning of Section 2(5) of the Act.

4. At all times material, the following described unit has been an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

[10] We also adopt the judge's finding that Specialty violated Sec. 8(a)(5) by refusing to furnish the Union the information it requested in its letter dated July 31, 1992.

[11] Chairman Gould does not agree that Specialty had no obligation to bargain with the Union before unilaterally changing existing terms and conditions of employment. Since all of the predecessor's employees were invited to apply for employment, the Chairman would find it ''perfectly clear'' that Specialty intended to hire its initial work force from the employees of the prior employer, and thus, under *Burns*, Specialty was required to bargain before establishing new terms of employment. As stated in his concurring opinion in *Canteen*, the majority's reliance in *Spruce Up* on an employer's announcement that it would hire the predecessor's employees but only under changed terms and conditions of employment to conclude that the employer does not intend to retain the predecessor's employees is a misreading of *Burns*. An employer's announcement of new terms and conditions of employment may affect employee desire or willingness to seek employment, but that is not the test for determining a ''perfectly clear'' successor under *Burns*. That test is simply whether the employer plans to hire its initial work force from the employees who are currently working. Since Specialty invited all of the prior employer's employees to apply for employment, it clearly intended to retain those employees and thus Specialty is a ''perfectly clear'' successor.

All regular production, maintenance, shipping and receiving employees, including truck drivers at the Specialty Envelope facility, excluding office and clerical employees, technical, managerial and professional employees, watchmen and guards as defined in the Act.

5. At all times material, the Union has been, and is now, the exclusive representative of the employees in the above-described bargaining unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

6. Western and the Union executed a collective-bargaining agreement effective December 10, 1990, through November 20, 1993.

7. Respondents Western and Peters, by unilaterally failing to make required payments for health insurance, sickness and accident disability insurance, and life insurance, violated Section 8(a)(5) of the Act.

8. Respondents Western and Peters, by unilaterally failing to make required pension fund payments, violated Section 8(a)(5) of the Act.

9. Respondents Peters and Specialty, by refusing to furnish the Union information requested by letters dated January 15, March 3, and July 31, 1992, which information was necessary and relevant to the Union's performance as collective-bargaining representative of unit employees, violated Section 8(a)(5) of the Act.

10. Respondent Peters, by the following conduct, unilaterally changed terms and conditions of employment existing under the predecessor in violation of Section 8(a)(5) of the Act:

(a) refusing to allow the Union's International representative access to its facility.

(b) abandoning the recall procedure, thereby failing to recall laid-off employees Ed Keuffner and DeWayne Hitsman.

(c) ceasing to acknowledge the grievance procedure.

(d) failing to pay the appropriate wage rate to employees classified as print technicians.

(e) eliminating the birthday holiday, paid breaks, and vacation benefits for unit employees.

(f) changing the job assignments and bidding procedures for unit employees.

(g) changing wage rates for unit employees temporarily transferred to work in higher classifications.

11. Respondent Peters, by refusing to bargain with the Union as the collective-bargaining representative of the unit employees, violated Section 8(a)(5).

12. Respondent Specialty, by unilaterally implementing a new disciplinary policy with respect to attendance of unit employees, violated Section 8(a)(5) of the Act.

13. Respondent Specialty, by refusing to bargain with the Union as the collective-bargaining representative of the unit employees, violated Section 8(a)(5) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that

A. The Respondent, Western Paper Products, Inc. d/b/a Specialty Envelope Company, Cincinnati, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to make contractually required payments for health insurance, sickness and accident disability insurance, and life insurance.

(b) Failing to make contractually required pension fund payments.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request of the Union, restore the employees' health insurance, sickness and accident disability insurance, and life insurance, and make all delinquent contributions to the pension fund, including any additional amounts due the fund in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, reimburse unit employees for any expenses ensuing from the unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[12] Liability for this make-whole remedy is joint and several with Respondent Specialty Envelope, Inc.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, mail signed and dated copies of the attached notice marked ''Appendix A''[13] to the Union and to all unit employees employed as of the time the Respondent ceased operations. Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be mailed, at its own expense, immediately upon receipt

[12] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

by the Respondent to the last known address of each employee.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The Respondent, Samuel L. Peters, Receiver, Cincinnati, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain in good faith with United Paper Workers International Union, AFL–CIO and its Local 459, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All regular production, maintenance, shipping and receiving employees, including truck drivers at the Specialty Envelope facility, excluding office and clerical employees, technical, managerial and professional employees, watchmen and guards as defined in the Act.

(b) Refusing to furnish the Union information that is necessary and relevant to the performance of its duties as collective-bargaining representative of unit employees.

(c) Unilaterally changing wages, hours, and other conditions of employment without bargaining about these changes with the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain collectively with the Union as the exclusive representative of the Respondent's employees in the above unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document.

(b) Furnish the Union with the information it requested by letters dated January 15 and March 3, 1992.

(c) On request of the Union, rescind the unilateral changes in terms and conditions of employment found unlawful and make the employees whole for any loss of earnings and other benefits attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra. In addition, the Respondent shall make all delinquent contributions to the pension fund, including any additional amounts due the fund in accordance with *Merryweather Optical*, supra. Further, the Respondent shall reimburse unit employees for any expenses ensuing from the unlawful conduct, as set forth in *Kraft Plumbing & Heating*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[14] Liability for this make-whole remedy is joint and several with Respondent Specialty Envelope, Inc.

(d) Recall employees Ed Keuffner and DeWayne Hitsman pursuant to the recall provisions of the contract between the Union and Respondent Western, and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra. Liability for backpay is joint and several with Respondent Specialty Envelope, Inc.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, mail signed and dated copies of the attached notice marked ''Appendix B''[15] to the Union and to all unit employees employed as of the time the Respondent ceased operations. Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be mailed, at its own expense, immediately upon receipt by the Respondent to the last known address of each employee.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

C. The Respondent, Specialty Envelope, Inc., Cincinnati, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain in good faith with United Paper Workers International Union, AFL–CIO and its Local 459, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All regular production, maintenance, shipping and receiving employees, including truck drivers at the Specialty Envelope facility, excluding office and clerical employees, technical, managerial and professional employees, watchmen and guards as defined in the Act.

(b) Refusing to furnish the Union information that is necessary and relevant to the performance of its duties as collective-bargaining representative of unit employees.

[14] See fn. 12, supra.

[15] See fn. 13, supra.

(c) Unilaterally changing wages, hours, and other conditions of employment without bargaining about these changes with the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain collectively with the Union as the exclusive representative of the Respondent's employees in the above unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document.

(b) Furnish the Union with the information it requested by letter dated July 31, 1992.

(c) On request of the Union, rescind the new disciplinary policy with respect to the attendance of unit employees until such time as the Respondent bargains in good faith with the Union to agreement or impasse. Offer full and immediate reinstatement to any employees discharged pursuant to the unlawfully implemented policy, and make employees whole for any loss of earnings and other benefits attributable to the Respondent's unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

(d) Jointly and severally with Respondent Western Paper Products, Inc. d/b/a Specialty Envelope Company, make the employees whole in the manner set forth in paragraph A,2,(a) of this Order.

(e) Jointly and severally with Respondent Samuel L. Peters, Receiver, make the employees whole in the manner set forth in paragraph B,2,(c) of this Order.

(f) Recall employees Ed Keuffner and DeWayne Hitsman pursuant to the recall provisions of the contract between the Union and Respondent Western, and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co*., supra, with interest as prescribed in *New Horizons for the Retarded*, supra. Liability for backpay is joint and several with Respondent Samuel L. Peters, Receiver.

(g) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at the Cincinnati, Ohio facility copies of the attached notice marked ''Appendix C.''[16] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 30, 1992.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[16] See fn. 13, supra.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to make contractually required payments for employee health insurance, sickness and accident disability insurance, and life insurance.

WE WILL NOT fail to make contractually required payments to the pension fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL on request of the Union, restore the employees' health insurance, sickness and accident disability insurance, and life insurance, and WE WILL make all delinquent contributions to the pension fund. In addition, WE WILL reimburse unit employees for any expenses ensuing from our unlawful conduct, with interest.

WESTERN PAPERS PRODUCTS, INC.
D/B/A SPECIALTY ENVELOPE COMPANY

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain in good faith with United Paper Workers International Union, AFL–CIO and its Local 459, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All regular production, maintenance, shipping and receiving employees, including truck drivers at the Specialty Envelope facility, excluding office and clerical employees, technical, managerial and professional employees, watchmen and guards as defined in the Act.

WE WILL NOT refuse to furnish information to the Union that is necessary and relevant to the performance of its duties as collective-bargaining representative of unit employees.

WE WILL NOT unilaterally change wages, hours, and other conditions of employment without bargaining about these changes with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, on request, bargain collectively with the Union as the exclusive representative of our employees in the above unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document.

WE WILL furnish the Union with the information it requested by letters dated January 15 and March 3, 1992.

WE WILL, on request of the Union, rescind our unlawful unilateral changes in terms and conditions of employment, and WE WILL make employees whole for any loss of earnings and other benefits attributable to our unlawful conduct, with interest. In addition, WE WILL make all delinquent contributions to the pension fund, and WE WILL reimburse unit employees for any expenses ensuing from our unlawful conduct, with interest.

WE WILL recall employees Ed Keuffner and DeWayne Hitsman pursuant to the recall provisions of the contract between the Union and Western Paper Products, Inc. d/b/a Specialty Envelope Company, and WE WILL make them whole for any loss of earnings and other benefits, with interest.

SAMUEL L. PETERS, RECEIVER

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain in good faith with United Paper Workers International Union, AFL–CIO and its Local 459, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All regular production, maintenance, shipping and receiving employees, including truck drivers at our facility, excluding office and clerical employees, technical, managerial and professional employees, watchmen and guards as defined in the Act.

WE WILL NOT refuse to furnish information to the Union that is necessary and relevant to the performance of its duties as collective-bargaining representative of unit employees.

WE WILL NOT unilaterally change wages, hours, and other conditions of employment without bargaining about these changes with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, on request, bargain collectively with the Union as the exclusive representative of our employees in the above unit with respect to rates of pay, wages, hours, and other terms and conditions

of employment and, if an agreement is reached, embody it in a signed document.

WE WILL furnish the Union with the information it requested by letter dated July 31, 1992.

WE WILL, on request of the Union, rescind the new disciplinary policy with respect to the attendance of unit employees until such time as we bargain in good faith with the Union to agreement or impasse. WE WILL offer full and immediate reinstatement to any employees discharged pursuant to the unlawfully implemented policy, and WE WILL make employees whole for any loss of earnings and other benefits attributable to our unlawful conduct, with interest.

WE WILL recall employees Ed Keuffner and DeWayne Hitsman pursuant to the recall provisions of the contract between the Union and Western Paper Products, Inc. d/b/a Specialty Envelope Company, and WE WILL make them whole for any loss of earnings and other benefits, with interest.

SPECIALTY ENVELOPE, INC.

Donald A. Becher, Esq. and *Mary Elizabeth Walker-McBride, Esq*., for the General Counsel.
David K. Montgomery, Esq., of Cincinnati, Ohio, for the Respondent.
Peter M. Fox, Esq., of Cincinnati, Ohio, for the Union.

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. On the various dates set forth there, charges were filed by United Paper Workers International Union, AFL–CIO and its Local 459 (the Union or the Charging Party), against Western Paper Products, Inc. d/b/a Speciality Envelope Company, Samuel L. Peters, Receiver (Western) and Specialty Envelope, Inc. (Specialty). Several complaints based on the allegations of the various charges against both Respondents were consolidated into an order consolidating cases, fourth consolidated complaint and order rescheduling hearing which issued on December 22, 1992. That complaint alleges, inter alia, that Western violated Section 8(a)(1) of the Act by promising to provide employees with improved medical and insurance benefits if they withdrew their support for the Union. The complaint also alleges 8(a)(5) violations by Western in refusing to furnish information to the Union necessary and relevant to its duties as collective-bargaining representative of Western's production and maintenance employees; by making various unilateral changes in the terms and conditions of employment of those employees without notice to or consultation with the Union; and refusing to discuss, on request, the matter of Western going into receivership, as it affected the terms and conditions of employment of unit employees.

With respect to Specialty, alleged as a successor to Western, the complaint alleges 8(a)(5) violations by: the failure of Specialty to furnish certain information necessary and relevant to the Union's duties as collective-bargaining representative of the unit employees; making various unilateral changes in the terms and conditions of employment of unit employees without notice to or consultation with the Union; by its overall conduct in refusing to bargain in good faith with the Union and by withdrawing recognition from the Union.[1] Answers to the various complaints have been timely filed. Pursuant to notice, a hearing was held before me on March 2 and 3, 1993. Briefs have been timely filed by Respondent, the General Counsel, and the Charging Party, which have been considered.

FINDINGS OF FACT

I. EMPLOYER'S BUSINESS

Western was a manufacturer of commercial envelopes with a production facility at Cincinnati, Ohio. During the 12 months immediately preceding June 25, 1992, it sold and shipped from that facility goods valued in excess of $50,000 directly to points outside the State of Ohio. Based on these jurisdictional facts, which are admitted in the answer, I conclude that Respondent Western is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The parties stipulated at the hearing that Specialty, since beginning operations, has sold $50,000 worth of goods across state lines from the Cincinnati facility and is engaged in commerce within the meaning of the National Labor Relations Act.

II. LABOR ORGANIZATION

The complaint alleges and the record here establishes that the Union is an employee organization dealing with employers concerning terms and conditions of employment and is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

About June 1988, Western bought an envelope manufacturing facility located at Cincinnati, Ohio. At that time, the employees of Western were represented by the Union and Western agreed to honor the then-existing collective-bargaining agreement with the Union. Subsequently, a new contract was negotiated effective December 10, 1990, through November 20, 1993.

For some time prior to the execution of the 1990 contract, Western had been experiencing financial difficulty. During 1991, the production staff was reduced from 150 employees to about 70 employees, and during those weeks toward the end of 1991, production was significantly reduced because suppliers were refusing to provide production material to the facility. On January 9, 1992,[2] without the funds to guarantee

[1] The complaint also alleges that Specialty violated Sec. 8(a)(5) of the Act by insisting as a condition of collective bargaining that the Union agree to withdraw the unfair labor practice charges filed by the Union against Western. The General Counsel attempted to adduce testimony thereon, but on motion by Respondent, the General Counsel was precluded from taking such testimony because these conversations were essentially settlement discussions, and testimony inhibiting such discussions are not admissible.

[2] All dates refer to 1992 unless otherwise indicated.

wages, the employees were sent home to await further developments.

Meanwhile, in view of these dismal economic prospects, Central Trust Company (Central Trust), who was Western's principal lender with a secured interest in the assets of Western, obtained on January, 13, an ''order Appointing Receiver'' from the Court of Common Pleas for Hamilton County. Under the terms of the Order, Samuel L. Peters was appointed Receiver and given control of Western's assets and the day-to-day operation of the business, as well as directions to attempt to sell Western's assets, subject to the approval of the court.[3] Also on January 13, the employees returned to work. As set out below in greater detail, the receivership lasted until June 19, when Peters himself purchased the assets of Western.

It is significant to note, and it is undisputed, that prior to the beginning of the receivership on January 13, about November 1991, Western had ceased making certain insurance payments to which it was contractually obligated under its labor agreement with the Union, specifically Employer contributions to the Union's pension fund and insurance premium contributions for health insurance, sickness, and accident disability insurance and life insurance.

On assuming the duties of Receiver on January 13, Peters went to the plant that same day and explained the situation to the employees. He introduced himself as the court-appointed Receiver and introduced Sam Venanzio as the new plant manager. It is undisputed that neither Peters nor Venanzio had any prior involvement in the affairs of Western.

It was stipulated by the parties that during the receivership, Peters declined to honor the existing labor agreement.[4] It is undisputed that contractually obligated insurance and pension payments, earlier discontinued by Western, were not resumed by Western after the appointment of the Receiver on January 13, although the Receiver–provided health care coverage was resumed. In addition, the Receiver declined to observe the contract's provisions concerning breaktimes, vacations, and birthdays as paid holidays and instituted his own policies as to those items. The birthday holiday was eliminated. During the receivership, Peters also ignored the job bidding procedures of the contract, denied plant access to the Union's International representative, as provided in the contract, failed to utilize the recall provisions of the contract in recalling laid-off employees, failed to pay the appropriate higher wage rate provided for in the contract to employees temporarily transferred to a higher wage classification, and failed to pay the appropriate contract wage rate to employees classified as print technicians. Indeed, it was conceded that Peters advised both the Union and the employees that the contract was not a part of the receivership, and the parties stipulated that any changes in working conditions made after January 13 were made without notice to the Union.

Consistent with this position, Peters, during the receivership, did not honor the grievance procedures of the contact. Various grievances filed with the Receiver over the Receiver's failure to observe various contract provisions, including vacations; bumping rights; reimbursement for health insurance premiums and health care costs for the period they were without coverage; union representatives' visitation rights to the plant; failure to make payroll deductions for union dues; payments to the pension fund; and hiring new employees instead of rehiring laid-off employees. All those grievances were rejected with identical memos from Venanzio stating:

> It is my understanding that the contract signed 12/13/90 is not a part of the receivership with Samuel L. Peters.
>
> We are doing everything possible to secure this Company as a profitable organization and are looking for your support and cooperation in this endeavor.

All these changes or modifications to the contract were unilaterally made, without notice to or bargaining with the Union.

During the receivership, the Union, in its capacity as collective-bargaining representative of the unit employees, by letter dated January 15, requested information from the Receiver, concerning the arrangements and documents which brought Western into receivership. Also, by letter dated March 3, the Union requested information relating to the enrollment of employees in Western's health care plan. Peters did not respond, and it is conceded that apart from whatever information it provided during settlement discussions, requests for information were not honored by Western during the receivership.

During the receivership period, in February 1992, an effort was made to decertify the Union. Annalee Turner, an employee, circulated a petition signed by the employees stating that they no longer desired representation by the Union. A decertification petition was filed with the Board on March 5, 1992, and dismissed by the Regional Director because of the pending unfair labor practice allegations and the existing labor agreement. Turner testified that Western's failure to make its contractually obligated contributions for the pension fund and health care premiums had ''quite a lot'' to do with the circulation of the decertification petition. Venanzio testified that he was shown a petition being circulated by Turner, but Turner has no recollection of showing him the petition, and Venanzio was only able to describe its contents in a general way.

As noted above, on June 19, the court approved Peter's purchase of the assets of Western and issued a ''Journal Entry Approving Offer to Purchase Assets, Confirming Sale, Ordering Deed and Distributing Sale Proceeds.'' At this time, a recently established corporation, Specialty Envelope, Inc. replaced Western Paper Products, Inc. d/b/a Specialty Envelope Company. Thereafter, all employees were required to fill out new employment applications and were advised on or about June 25 by memo of what their benefits would be as employees of Specialty Envelope, Inc. That memo reads:

[3] It appears that Peters had considerable expertise in this type of business as the owner of similar paper products companies.

[4] Peters did not testify.

Company Benefits
1992

HOLIDAY PAY:
MUST BE FULL TIME EMPLOYEE

MUST BE EMPLOYED 30 DAYS

TO RECEIVE HOLIDAY PAY

MUST WORK DAY BEFORE AND

DAY AFTER TO RECEIVE

HOLIDAY PAY

8 Days Paid:	New Years Memorial Day 4th of July Labor Day Thanksgiving and day after Christmas Eve and Christmas Day
Vacations:	Must be full time employee 1 Week after 1st year employed (see attached) 2 Weeks after 2nd year employed (see attached) 3 Weeks after 10 years employed (see attached) Vacations are not accrued. Vacations must be taken in year earned or it is forfeited. Once termination has occurred no vacation pay is due to the employee. * See attached vacation policy for times vacation must be taken and cutoff date for earned vacation.
Insurance *Disability	Medical (Community Mutual HMP) Must be full time employee Eligible for company insurance 90 days after 1st day of employment. *Disability insurance after 1 year of employment
Birthday	Employees who have perfect attendance with no absences, tardiness, or leave work early for a full calendar year (Jan. 1 thru Dec. 31) will receive their birthday off with pay.
Payroll Deductions:	Benefits offered thru payroll deductions: Credit Union Savings Christmas club Loans IRA—Offered thru 5th 3rd bank 401K Plan
Seniority	Previous service with Western Paper Products, Inc., will be honored for all purposes except bumping in the event of a layoff.

The record also reflects, either by way of stipulation or admission, that, after the purchase, Specialty continued to decline to make payments to the Union's pension fund and continued in effect various changes in working conditions made during the receivership, i.e., job assignments and job bidding procedures, wage rates for unit employees temporarily transferred to work in higher classifications, and workbreaks.

On or about July 21, Specialty also issued a personnel policy announcement stating the number of absences and latenesses that would be considered excessive and ''in violation of the Company's attendance standards.''

After the June 19 sale, the Union continued to request information. By letter dated July 31 to Peters, the Union requested certain information concerning seniority, health insurance, life insurance, sickness and accident benefits, and sale documents related to the purchase by Specialty in contemplation of the possible enrollment of the unit employees into a union-sponsored health care plan. The letter also asked for data concerning coverage of unit employees under the existing Specialty health care plan. It is conceded that none of this information was provided to the Union and, apart from information produced pursuant to unsuccessful settlement efforts, none of the information requested by the Union since the beginning of the receivership has been provided.

The parties also stipulated that since January 13, Peters, as Receiver, and Specialty have refused either to honor the contract or to recognize and bargain with the Union. It was also stipulated that all the changes made in the terms and conditions of employment, either by Peters during his receivership or made by Specialty, were unilateral, without notice to or consultation with the Union.

B. *Discussion and Analysis*

To briefly review the basic and undisputed facts, Western, after encountering overwhelming financial problems, was forced into receivership by its principal creditor, Central Trust. The court appointed as Western's Receiver, Samuel Peters, a man with substantial industrial expertise in the same line of products. The court ordered Peters to manage the affairs of Western and to attempt to find a purchaser for Western's assets, the proceeds of the sale to satisfy the indebtedness to Central and other Western creditors. On assuming receivership status, Peters announced his intention to purchase Western himself and, subsequently, with court approval, this was done.

In November 1991, Western ceased making payments for health insurance premiums, and, about the same time, ceased making pension contributions on behalf of the unit employees. Both payments were required by the labor contract. Neither was resumed by Peters. After the appointment of Peters as Receiver on January 13, the receivership ended on June 19, when the Court of Common Pleas, Hamilton County, Ohio, approved the sale of Western's assets to Specialty,

owned by Peters, by order dated June 19, 1992. During Peters' receivership and under his direction, various unfair labor practices were committed. Indeed, Peters announced his decision not to honor the existing collective-bargaining agreement, instituted various changes in terms and conditions of employment, and refused to discuss the receivership issues with the Union. Beginning on June 19, the Company began operations as Specialty Envelope, Inc. At this time the employees were advised by memoranda of various changes that were being made in their conditions of employment and they were required to make out new employment applications for employment as employees of Specialty. It is undisputed that all the changes in working conditions and terms of employment, set out above in greater detail, were implemented without notice to or consultation with the Union.

After Specialty began operations, various requests for information and requests to bargain were made by the Union for Specialty's employees. It is undisputed that none of these requests were honored by Specialty.

There can be no doubt that Western, prior to January 13, violated Section 8(a)(5) and Section 8(d) of the Act by failing to make payments for insurance premiums and failing to make payments to the pension fund as required by the existing labor contract, and I so find.

It is next necessary to consider those unfair labor practices occurring during the period of the receivership. The complaint alleges that those unfair labor practices committed by Peters, as Receiver, were assignable to Western since Peters was an agent of Western. Respondent disagrees, and cites the Board decision in *Cone-Heiden*[5] as authority for its position that state court appointed receivers are not agents of the companies they manage. In *Cone-Heiden*, the Board held that a receiver appointed by a state court to temporarily manage the assets of an employer was not an agent of that employer, but was rather a ''fiduciary charged by the Court with managing Cone-Heiden assets for the benefit of Cone-Heiden's creditors'' *Cone-Heiden*, supra at 1, and, as fiduciary for the creditors, it could not also be an agent of Cone-Heiden.

In the instant case, Peters was appointed by an Ohio state court as a receiver with a duty to protect and preserve the assets of Western for its its creditors, principally Central Trust, and to seek a buyer, sell the assets and satisfy insofar as possible Western's financial obligations to Central Trust and thereafter to repay other creditors with any remaining funds. In these circumstances, as in *Cone-Heiden*, I conclude that the Receiver, Peters, was not the agent of Western. Accordingly, I shall recommend that those unfair labor practices alleged to have been committed by Western during the period of Peters' receivership be dismissed.

Next, it is necessary to consider the matter of Specialty as successor to Western. In the instant case, it is undisputed that Specialty ''signed up'' basically the entire Western work force and management as its own employees. It continued to operate from the same facilities and to produce the same products with the same machinery and to service the same customers. In these circumstances, it is clear that Specialty is a successor to Western under criteria established by the Supreme Court in *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987). Thereafter, Specialty, as a successor to Western, was obliged to bargain with the Union as the collective-bargaining representative of its employees. *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

Having thus concluded that Specialty is a successor to Western, there remains for consideration what obligation, if any, exists on the part of Specialty, as a successor, to remedy the unfair labor practices committed by Western. In *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973), the Supreme Court held that where a purchaser was a bona fide successor under *Burns*, and is aware of the unfair labor practices of its predecessor, it has joint and several liability with the predecessor to remedy those unfair labor practices. The record here makes it clear that that Specialty was fully aware of the outstanding unfair labor practices allegations against Western, particularly bacause Peters, the sole owner of Specialty, had also been Western's Receiver and fully informed of all the pending unfair labor practice allegations from the time the first charge was filed on January 30. Accordingly, in these circumstances, when Specialty acquired ownership of Western's assets, it became, with Western, as successor, jointly and severally liable for remedying those unfair labor practices committed by Western.

Respondent contends that there is no successor relationship between Specialty and Western because there was no business relationship between Western and Specialty at the time of purchase, and such a business relationship is essential to any successor finding. Respondent argues that Western's assets were purchased by Specialty, not from Western, but from an intervening entity, Peters, the state court appointed Receiver, and so there was no business relationship between Specialty and Western. The weakness in this argument is that Western remained, even during the receivership and through the sale, a viable corporate entity and its assets, although sold through the Receiver to Specialty, were still Western's assets, not Peters. To hold otherwise would be to conclude that Peters bought something he already owned. The fact is that Peters, as sole owner of Specialty, purchased all the assets of Western for $1.7 million. There was clearly a business relationship between Specialty and Western.[6]

There remains for consideration the General Counsel's allegations that those unilateral changes made by Specialty as successor to Western violated Section 8(a)(5) of the Act. Under *Burns*, it is clear that a successor corporation has no obligation to assume the labor contract of its predecessor and may normally set initial terms of employment for the work force. However, this principle does not apply in circumstances where the successor retains the same work force as the predecessor. As the Court held in *Burns*:

> Although a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor, there will be instances in which it is perfectly clear that the new employer plans to retain all the employees in the unit and in which it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms.[7]

The Board has applied this concept in *U.S. Marine Corp.*, 293 NLRB 669, 671 (1989), observing that:

[5] *Cone-Heiden Corp.*, 305 NLRB 1045 (1991).

[6] Respondent's reliance on *Glebe Electric*, 307 NLRB 883 (1992), is misplaced because in *Glebe*, unlike the instant case, there was no purchase and otherwise no evidence of a viable business relationship.

[7] *Burns*, supra at 294, 295.

> Under *Burns*, supra, a successor employer is ordinarily free to set initial employment terms, without preliminary bargaining with the incumbent Union. When, however, ''it is perfectly clear that the new employer plans to retain all of the employees in the unit,'' the successor must consult the Union before altering the terms and conditions of employment.[8]

In the instant case, Specialty, after the purchase from Western, continued the operation basically unchanged and retained Western's employees, simply having them submit new employment applications to sign up with Specialty. In these circumstances, Specialty was not free to set initial terms of employment, and with respect to any changes made in the terms and conditions of employment of unit employees after June 19, Specialty was obligated to consult with the Union. Having failed to do so, Specialty violated Section 8(a)(5) of the Act.[9]

Specialty is also alleged to have violated the Act by continuing in effect certain unilateral changes in working conditions initiated during the receivership, as set out above. In agreement with the General Counsel, I conclude that when Specialty either implemented or continued in effect those unilateral changes in working conditions which would have been unlawful at their inception, except that they were committed during the receivership, Specialty violated Section 8(a)(5) of the Act.

As noted above, Specialty was obligated to bargain with the Union as the collective-bargaining representative of its employees. Because the Union thus retained its status as collective-bargaining representative, Specialty was obliged to furnish to the Union whatever information was requested by the Union which was relevant and necessary to the exercise of that responsibility. By failing to provide the Union with the information it requested concerning seniority and health care coverage in its letter dated July 31, 1992, Respondent is refusing to bargain with the Union within the meaning of Section 8(a)(5) of the Act.

In a separate contention, Specialty argues that even assuming that it is a successor to Western, the Union lost its majority status by reason of a petition signed by a majority of the employees in March 1992 indicating that they no longer desired union representation. Specialty argues that even a successor has no obligation to recognize and bargain with a union where it has a good-faith doubt, based on objective considerations, that the Union no longer represents a majority of the unit employees. However, this record, despite the filing of a decertification petition, is totally insufficient to support the conclusion that Specialty had any reasonable basis for concluding that the Union no longer represented a majority of its employees.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondents, as set forth in section III, above, in connection with the Respondents' operations described in section I, above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. REMEDY

With respect to the failure to make contractually obligated insurance payments and pension fund contributions, as noted above, these violations were committed by Western. However, because Specialty was a successor to Western, fully aware of those unfair labor practice allegations, both are jointly and severally liable for compliance with the remedial order.

After the purchase, because Specialty, as noted above, maintained essentially the same work force performing the same functions as Western, Specialty was not free to set its own terms and conditions of employment and is liable for the remedy of the unilateral change unfair labor practices committed after the purchase; refusing to furnish the Union with requested information; and failing to recognize and bargain with the Union. The status quo, for the purpose of remedying the unilateral change unfair labor practices committed by Specialty, shall be the terms and conditions of employment as they existed under Western, including those embodied in the collective-bargaining agreement.

The status quo for remedying those unilateral change unfair labor practices initiated by the Receiver and also alleged as violations by Specialty shall also be the terms and conditions of employment, including the collective-bargaining agreement, as they existed under Western. To hold otherwise where, like here, Peters was both the Receiver and the owner of the successor, would be to allow the successor to profit from its own wrongdoing while acting with impunity as the Receiver. It would be inequitable to allow Peters, as owner of the successor, to enjoy the fruits of the unfair labor practices he committed in his capacity as Receiver, even though as Receiver, he was not accountable for them.

Because the Receiver was not an agent of Western, those unfair labor practices committed during the receivership are not assignable to Western.

All payments owing by Respondent under the terms of this Order shall be with interest and shall be computed in the manner described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and *F. W. Woolworth Co.*, 90 NLRB 289 (1950).

CONCLUSIONS OF LAW

1. Respondent Western Paper Products, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Specialty Envelope, Inc. is a successor to Western Paper Products, Inc. and an employer within the meaning of Section 2(6) and (7) of the Act.

3. United Paper Workers International Union, AFL–CIO and its Local 459 is a labor organization within the meaning of Section 2(5) of the Act.

4. At all times material, the following described unit has been an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All regular production, maintenance, shipping and receiving employees, including truckdrivers, at [Western and/or Specialty Envelope's] facility, but excluding of-

[8] *U.S. Marine Corp.*, supra at 671, 672.

[9] Specific requests to bargain for those employees of Specialty covered by the contract were made by the Union in letters to Peters dated June 23 and July 1.

fice and clerical employees, technical, managerial and professional employees, watchmen, guards and supervisors as defined in the Act.

5. At all times material, the Union has been and is now the exclusive representative of the employees in the above-described bargaining unit for the purposes of collective-bargaining within the meaning of Section 9(a) of the Act.

6. Western and the Union executed a collective-bargaining agreement effective December 10, 1990, through November 20, 1993.

7. Respondent Western, by failing and refusing to make contractually obligated payments for employee health insurance, sickness and accident disability insurance, and life insurance, violated Section 8(a)(5) and Section 8(d) of the Act.

8. Respondent Western, by failing and refusing to make contractually obligated payments to the pension plan, violated Section 8(a)(5) and Section 8(d) of the Act.

9. Respondent Specialty, by failing and refusing to furnish to the Union information requested by letter dated July 31, 1992, which was necessary and relevant to the Union's performance as collective-bargaining representative of the unit employees, violated Section 8(a)(5) of the Act.

10. Respondent Specialty, by unilaterally eliminating the birthday holidays, paid breaks, and vacation benefits for unit employees, violated Section 8(a)(5) of the Act.

11. Respondent Specialty, by unilaterally changing the job assignments and job-bidding procedures for unit employees, violated Section 8(a)(5) of the Act.

12. Respondent Specialty, by unilaterally changing wage rates for unit employees temporarily transferred to work in higher classifications, violated Section 8(a)(5) of the Act.

13. Respondent Specialty, by unilaterally ceasing to honor unit employees' seniority for purposes of layoff, violated Section 8(a)(5) of the Act.

14. Respondent Specialty, by unilaterally implementing a new disciplinary policy with respect to the attendance of unit employees, violated Section 8(a)(5) of the Act.

15. Respondent Specialty, by refusing to bargain with the Union as the collective-bargaining representative of the unit employees, violated Section 8(a)(5) of the Act.

[Recommended Order omitted from publication.]

Donald A. Becher, Esq. and *Mary Elizabeth Walker-McBride, Esq.*, for the General Counsel.
David K. Montgomery, Esq., of Cincinnati, Ohio, for the Respondent.
Peter M. Fox, Esq., of Cincinnati, Ohio, for the Union.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. By decision dated November 23, 1993, the Board reversed a ruling made at the hearing and granted the General Counsel's motion to amend the complaint to allege that Samuel L. Peters (Peters), in his capacity as Receiver, was an employer within the meaning of the Act and a successor to Western Paper Products, Inc. (Western). The Board also ordered that the case be remanded to me ''to adduce further evidence on the Receiver's alleged status as a statutory employer and its alleged liability for actions taken during the receivership.''

In lieu of further hearing, the parties on April 18, 1994, submitted to me a set of stipulations setting forth the probative facts. Thereafter, briefs were timely filed by the General Counsel, the Charging Party, and Respondent which have been duly considered.

FINDINGS OF FACT

I. EMPLOYER'S BUSINESS

A. *Facts*

As set out in the original decision in greater detail, Western, after experiencing serious economic problems, was forced into receivership by its principal lender, Central Trust Company (Central Trust). The Court of Common Pleas for Hamilton County, Ohio, on January 13, 1992,[1] issued an order appointing Peters as Receiver with control over the day-to-day operations of the business, including expenditures incident thereto. The court order appointing Peters also directed him to attempt to sell the assets of Western. The stipulations disclose that Peters assumed the responsibility of Receiver with the intention of attempting to purchase the assets of Western himself.

The receivership ended on June 19 when Peters himself did, in fact, purchase the assets of Western with funding provided by Central Trust and began operations as Specialty Envelope, Inc. (Specialty).

As treated in greater detail in my original decision, it is conceded that Peters did not regard the union contract then in effect as part of the receivership and did not honor it during the period of the receivership. Changes and modifications in those terms and conditions of employment contained in the contract were made without regard to the contract and without notice to the Union. All of the grievances filed to protest these unilateral actions taken by Peters were rejected by Peters.

As set out in the original decision:

> It was stipulated by the parties that during the receivership, Peters declined to honor the existing labor agreement. [Footnote omitted] It is undisputed that contractually obligated insurance and pension payments, earlier discontinued by Western, were not resumed by Western after the appointment of the Receiver on January 13, although Receiver-provided health care coverage was resumed. In addition, the Receiver declined to observe the contract's provisions concerning break times, vacations and birthdays as paid holidays and insisted on his own policies as to those items. The birthday holiday was eliminated. During the receivership, Peters also ignored the job bidding procedures of the contract, denied plant access to the Union's International representative, as provided in the contract, failed to utilize the recall provisions of the contract in recalling laid-off employees, failed to pay the appropriate higher wage rate provided for in the contract to employees temporarily transferred to a higher classification, and failed to pay the appropriate contract wage rate to employees classified as print technicians. Indeed, it was conceded that Peters advised both the Union and

[1] All dates refer to 1992 unless otherwise indicated.

> the employees that the contract was not a part of the receivership, and the parties stipulated that any changes in working conditions made after January 13 were made without notice to the Union. [Sec. III, A, par. 6 supra.]

The postremand stipulations submitted April 18, 1994, also disclose that during the period of the receivership, the business ''purchased and received and/or sold and shipped goods, products materials valued at excess of $50,000 directly across state lines.''

B. *Discussion and Analysis*

The only legal issue to be resolved for the purposes of the remand is whether or not Peters, in his capacity as Receiver for Western, is an employer under the Act.[2] The General Counsel argues that under applicable Board and court precedent, a receiver appointed by a state court is an employer under the Act, while the Respondent contends that the receiver is exempt from the Act's jurisdiction as a political subdivision of a State.

In *Holiday Inn Coliseum*, 300 NLRB 631 (1990), the Respondent contended that Stein, a receiver appointed by an Ohio state court, was not an employer under the Act since the receivership was a ''political subdivision'' of the State and hence excluded by definition under the Act.

The Board rejected this contention, concluding that Stein, in his capacity as receiver, was not exempt. In reaching this conclusion, the Board followed the two criteria set out in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971), which held that an employer is a political subdivision if it is either ''created directly by the state so as to constitute a department or administrative arm of the government'' or ''administered by individuals who are responsible to public officials or to the general electorate.'' *Hawkins*, supra at 604–605.

In *Holiday Inn*, the Respondent did not argue and the Board did not find that the receiver met the first test as ''created directly by the state.'' The Board further concluded that the second test had not been met. The Board states:

> Further, where the State has a temporary interest in the employing entity, for reasons unrelated to the actual services provided by that employer and unrelated to any state interest in regulating the manner in which the employer's services are provided, we find the situation most closely analogous to bankruptcy trustees, over whom we do assert jurisdiction. See, e.g., *Karsh's Bakery*, 273 NLRB 1131 (1984). Given the temporary nature of the State's interest and the limited nature of its interest in preserving the value of a disputed asset, we find that the receiver is not a political subdivision as defined under the second prong of the *Hawkins* test. Accordingly, we find the Employer is not exempt from Board jurisdiction on this basis. [300 NLRB at 632.]

Nonetheless, the Respondent contends, citing various state court rulings to support its position, that the Receiver meets the second prong of the *Hawkins* test as an agent of the court and that the assets under the administration of the Receiver are under the care and supervision of the court which appoints him on behalf of the creditors to manage those assets, while the court is, in turn, an elected official responsible to the ''general electorate.''

Respondent also argues that Peters, as the Receiver, meets the first prong of the *Hawkins* test as having been ''created directly by the state so as to constitute a department or administrative arm of the government.'' However, having reviewed the entire record, I am satisfied that the evidence is totally insufficient to support that contention.

In short, it is clear to me that the *Holiday Inn* case is directly in point and that under current Board law, namely the *Holiday Inn* case, that Respondent does not meet either prong of the *Hawkins* test and is not a political subdivision of the State of Ohio.

In summary, I conclude that Peters, in his capacity as Receiver, was an employer within the meaning of Section 2(2) of the Act and a successor employer to Western.[3]

Respondent further contends that Peters was free to make unilateral changes in the working conditions of the employees because the Union never made a bargaining demand on Peters as the Receiver. I do not agree. As discussed below in the remedy section, a successor employer retaining essentially the same operation and work force as its predecessor, is obliged under *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), to consult with the Union before altering or modifying any terms or conditions of employment.[4] This is true whether or not any bargaining demand had been made.

II. LABOR ORGANIZATION

The complaint alleges, and the record establishes, that the Union is an employee organization dealing with employers concerning terms and conditions of employment and is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The Respondent does not contend that the unfair labor practices were not committed. It concedes that Peters, as set out above, refused to honor the existing contract which embodied most of the terms and conditions of employment then in effect, rejected all grievances alleging contract violations, and made unilateral changes in the terms and conditions of employment of unit employees.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent, as set forth in section III, above, in connection with the Respondent's operations described in section I, above, have a close, intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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[2] Sec. 2(2) of the Act provides that the term employer ''includes any person acting as an agent of an employer, directly or indirectly, but shall not include . . . any state or political subdivision thereof.''

[3] The Union also argues in its brief that Peters was the alter ego of Western, however this contention was not alleged by the General Counsel, was not litigated and is not treated in this decision.

[4] See also *U.S. Marine Corp.*, 293 NLRB 669, 671 (1989).

CONCLUSIONS OF LAW

1. Respondents Western Paper Products, Inc., Receiver Samuel L. Peters, and Specialty Envelope, Inc. are each employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Peters, as Receiver for Western, is a successor employer to Western, and Specialty Envelope, Inc. is a successor to Respondent Peters.

3. United Paper Workers International Union, AFL–CIO and its Local 459, is a labor organization within the meaning of Section 2(5) of the Act.

4. At all times material, the following described unit has been an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All regular production, maintenance, shipping and receiving employees, including truck drivers at the Specialty Envelope, Inc. facility, excluding office and clerical employees, technical, managerial and professional employees, watchmen and guards as defined in the Act.

5. At all times material, the Union has been and is now the exclusive representative of the employees in the above-described bargaining unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

6. Western and the Union executed a collective-bargaining agreement effective December 10, 1990, through November 20, 1993.

7. Respondents Western, Peters, and Specialty, by failing to make monthly payments payroll deductions for union dues and remitting them to the Union, violated Section 8(a)(5) of the Act.

8. Respondents Western, Peters, and Specialty, by failing and refusing to make contractually obligated for employees' health insurance, sickness and accident disability insurance and life insurance, violated Section 8(a)(5) of the Act.

9. Respondents Western, Peters, and Specialty, by failing and refusing to make contractually obligated payments to the pension plan, violated Section 8(a)(5) of the Act.

10. Respondents Western, Peters, and Specialty, by failing and refusing to furnish the Union information requested by letters dated January 15, March 3, and July 31, 1992, which were necessary and relevant to the Union's performance as collective-bargaining representative of the unit employees, violated Section 8(a)(5) of the Act.

11. Respondent Peters, by refusing to allow the Union's International representative access to its facility, violated Section 8(a)(5) of the Act.

12. Respondent Peters, by unilaterally abandoning the recall provisions in effect under the contract, thereby failing to recall laid-off employees Ed Keuffner and DeWayne Hitsman, violated Section 8(a)(5) of the Act.

13. Respondent Peters, by ceasing to acknowledge the grievance procedures provided for in the contract, violated Section 8(a)(5) of the Act.

14. Respondent Peters, by failing to pay the appropriate contract rate to employees classified as print technicians, violated Section 8(a)(5) of the Act.

15. Respondent Peters, by refusing the Union's request to meet to discuss the receivership issue and other terms and conditions of employment, violated Section 8(a)(5) of the Act.

16. Respondents Peters and Specialty, by unilaterally eliminating the birthday holiday, breaks, and vacation benefits for unit employees, violated Section 8(a)(5) of the Act.

17. Respondents Peters and Specialty, by unilaterally changing the job assignments and job bidding procedures for unit employees, violated Section 8(a)(5) of the Act.

18. Respondents Peters and Specialty, by unilaterally changing wage rates for unit employees temporarily transferred to work in higher classifications, violated Section 8(a)(5) of the Act.

19. Respondent Specialty, by unilaterally ceasing to honor unit employees' seniority for purposes of layoff, violated Section 8(a)(5) of the Act.

20. Respondent Specialty, by unilaterally implementing a new disciplinary policy with respect to the attendance of unit employees, violated Section 8(a)(5) of the Act.

21. Respondent Specialty, by withdrawing recognition from the Union as collective-bargaining representative of unit employees and thereafter refusing to meet and bargain with the Union, has violated Section 8(a)(5) of the Act.

REMEDY

Under the Supreme Court's *Golden State* decision,[5] a bona fide successor, aware of the unfair labor practices committed by its predecessor, has a joint and several liability with the predecessor to remedy those violations.

In the instant case, Respondent Peters, the Receiver, was fully aware of the unfair labor practices committed by Western and was a *Golden State* successor to Respondent Western. Respondent Specialty, in turn, through its owner, Respondent Samuel L. Peters, was fully aware of the unfair labor practices committed both by Western, and by himself as Respondent Peters, Receiver for Western.

With respect to remedy, as discussed in my original decision, the U.S. Supreme Court in the *Burns* case, supra, concluded that when it is ''perfectly clear'' that a successor plans on retaining all of the unit employees, he must consult with the union before he fixes any terms of employment. In the instant case, this calls for a return to the conditions of employment that existed before the changes were made; in other words, a restoration of the ''status quo ante,'' as reflected in the contract between Western and the Union. *U.S. Marine Corp.*, supra, enfd. 916 F.2d 183 (7th Cir. 1990), and 944 F.2d 1305 (7th Cir. 1991); *Worcester Mfg.*, 306 NLRB 218 (1992); *Weco Cleaning Specialists*, 308 NLRB 310 (1992).[6]

No remedial order is recommended as to Western. Western was forced into receivership and later purchased by Specialty. It ceased to exist as a responsible corporate legal entity and lacks the capacity to afford any meaningful relief.

As to Respondent Peters, as Receiver, in circumstances where the same individual, Peters, is both Respondent Receiver and owner of Respondent Purchaser (Specialty Envelope, Inc.), a remedial order running to both, jointly and severally, is deemed appropriate.

[Recommended Order omitted from publication.]

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[5] *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

[6] In my opinion, so long as the employer intends to retain all the unit employees, the restoration of the status quo ante is an appropriate remedy, and it is immaterial that the employer has not discriminated to avoid successorship status by discriminatory hiring practices as in *U.S. Marine Corp.* and *Weco.*